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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN

10 CHURCH OF SCIENTOLOGY INTERNATIONAL,)
a California not-for-profit)
11 religious corporation,)

No. 157 680

12 Plaintiff,)

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
ARMSTRONG'S MOTION TO
COMMENCE COORDINATION
PROCEEDINGS

13 vs.)

14 GERALD ARMSTRONG; MICHAEL WALTON;)
THE GERALD ARMSTRONG CORPORATION,)
15 a California for-profit)
corporation; DOES 1 through 100,)
16 inclusive,)

17 Defendants.)

Date: 11-12-93

Time: 9:00

Dept: 1

Trial Date: None Set

19 I. INTRODUCTION

20 This petition involves three cases involving plaintiff Church
21 of Scientology International ("Scientology") and defendants Gerald
22 Armstrong and The Gerald Armstrong Corporation ("collectively
23 "Armstrong"). ^{1/} Armstrong II and Armstrong III are presently

24 ¹ The included cases are as follows:

25 (1) Church of Scientology International v. Gerald Armstrong,
26 DOES 1 to 25, inclusive, Los Angeles County Superior Court, Case
No. BC 052 395 ("Armstrong II");

27 (2) Church of Scientology International v. Gerald Armstrong;
The Gerald Armstrong Corporation; DOES 1 to 25, inclusive, Los
28 Angeles County Superior Court, Case No. BC 084 642 ("Armstrong")

COPY

1 pending before the Honorable David Horowitz, Department 30 of Los
2 Angeles County Superior Court. Armstrong IV is pending before
3 this Court.

4 Gerald Armstrong was originally sued by the Church of
5 Scientology in Church of Scientology of California v. Gerald
6 Armstrong, Los Angeles Superior Court, Case No. No. C 420 153, for
7 conversion of documents. Armstrong prevailed and the trial
8 court's decision ^{2/} was affirmed on appeal. (Church of
9 Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060,
10 283 Cal.Rptr. 917.)

11 In 1986, Armstrong's cross-complaint against Scientology was
12 set for trial early in 1987. At that time, Scientology
13 compromised Armstrong's then-attorney, Michael Flynn, who also
14 represented many other former Scientologists who were suing the
15 organization which had violated their civil rights. The result of
16 said compromise was that Armstrong, and approximately 20 others,

17 _____
18 III");

19 (3) Church of Scientology International v. Gerald Armstrong;
20 The Gerald Armstrong Corporation; DOES 1 to 100, inclusive, Marin
21 County Superior Court, Case No. 157 680. ("Armstrong IV.")

22 ² In a blistering opinion, the Honorable Paul G.
23 Breckenridge, Jr. held, inter alia, that

24 "In addition to violating and abusing its own members civil
25 rights, the organization over the years with its "Fair Game"
26 doctrine has harassed and abused those persons not in the Church
27 whom it perceives as enemies. The organization is clearly
28 schizophrenic and paranoid, and this bizarre combination seems to
be a reflection of its founder LRH [L. Ron Hubbard]. The evidence
portrays a man who has been virtually a pathological liar when it
comes to his history, background, and achievements. The writings
and documents in evidence additionally reflect his egoism, greed,
avarice, lust for power, and vindictiveness and aggressiveness
against persons perceived by him to be disloyal or hostile."

(Greene Decl. Exhibit A at pp. 8:24-9:4, incorporated herein by
reference.)

1 signed a settlement contract. (Greene Decl., Ex. B, Declaration
2 of Gerald Armstrong filed on Sept. 14, 1993 in Armstrong III.)
3 Said settlement contract is attached as Exhibit A to, and provides
4 the basis for, each of the complaints in the actions proposed for
5 coordination. (Greene Decl. Ex C, Complaint in Armstrong II; Ex.
6 D, Complaint in Armstrong III)

7 Paragraph 4B required Armstrong not to oppose any appeal
8 Scientology took of Judge Breckenridge's decision. Paragraph 7G
9 of the contract prohibits Armstrong from voluntarily assisting or
10 cooperating with any person adverse to Scientology in any
11 proceeding against Scientology, or cooperating with organization
12 aligned against Scientology. Paragraph 7H prohibits Armstrong
13 from voluntarily participating in any litigation adverse to
14 Scientology unless pursuant to subpoena and to avoid service of any
15 such subpoena. Paragraph 10 prohibits Armstrong from assisting or
16 advising anyone contemplating any claim or engaged in litigation
17 against Scientology or contemplating any activity adverse to the
18 interests of Scientology. Paragraph 18 requires Armstrong to keep
19 the terms of the agreement secret.

20 The only case in which Armstrong has answered is Armstrong
21 II. (Greene Decl. Ex. E, First Amended Answer in Armstrong II.)
22 Over Scientology's demurrer and motion to strike, Armstrong has
23 asserted forty-three affirmative defenses. His defenses to the
24 settlement contract will be the same in all three pending cases.
25 What almost all of his affirmative defenses have in common is the
26 contract provisions that Scientology wants the Court to enforce
27 are intended to suppress evidence, obstruct justice, and violate
28 First Amendment guarantees of free speech and right to redress.

1 Thus, said provisions violate public policy and are illegal and
2 unenforceable.

3 On March 23, 1993, Judge Horowitz stayed all trial
4 proceedings in Armstrong II pending a decision from the Second
5 District Court of Appeal on the issue of the illegality of the
6 contract provisions Scientology is seeking to enforce against
7 Armstrong in each of the lawsuits proposed for coordination. ^{3/}
8 All briefing in the Court of Appeal having been completed, the
9 parties await the scheduling of oral argument.

10 On July 8, 1993, in an apparent effort to circumvent Judge
11

12 ³ In his Order granting Armstrong's motion for a stay,
13 Judge Horowitz found that the "legality and validity of the
14 Agreement" is the "central issue" in Armstrong II. Thus, he held
as follows:

15 "D, Mot for stay of proceedings GRANTED. The action is stayed
16 under CCP 916. Counsel are ordered to report any decision by the
17 Court of Appeal to this Department, in writing, within one day of
18 the issuance of the opinion so that this Court may lift the stay.

19 ". . . an appeal stays proceedings in the trial court upon
20 the . . . order appealed from or upon the matters embraced therein
21 or affected thereby . . ." CCP 916. As the Church has stated in
22 its Summary Adjudication motions, "The facts are undisputed,
23 however, that Armstrong has breached the Agreement repeatedly and
24 deliberately. Because of these breaches, a preliminary injunction
25 was issued by the Court on May 28, 1992." Obviously, the validity
26 of the Agreement is the basis for the preliminary injunction. One
27 of the basis for the appeal is an attack on the legality and
28 validity of the agreement.

The central issue of this case is the legality and validity
of the Agreement. The Court of Appeal could certainly reach that
issue in its determination of the validity of the injunction. If
it does, that ruling could be determinative of many of the issues
of this case. It makes no sense to proceed with this matter until
the Court of Appeal makes its ruling.

Any and all matters set in this department, including but not
limited to the Motions set for 3/31/93, the Final Status
Conference of 4/23/93 and the Trial of 5/3/93, are each advanced
and vacated.

Defendant shall give notice."

(Minute Order 3/23/93, Exhibit F, incorporated herein by
reference.)

1 Horowitz's stay order, Scientology filed Armstrong III.
2 Substantially identical to Armstrong II, it was ordered
3 transferred Department 30 as a related case. (Greene Decl. ¶ 5.)

4 Pursuant to Code of Civil Procedure section 425.16 ⁴/
5 Armstrong has filed a special motion to strike which is set for
6 hearing on October 6, 1993.

7 The instant motion is the first substantive action that
8 Armstrong has taken in the instant case.

9 **II. THIS COURT IS AUTHORIZED TO REFER**
10 **THE PETITION TO THE JUDICIAL COUNCIL**

11 California Rule of Court 1520 (b) states that a party may
12 request permission from the presiding judge of one of the court's
13 in which one of the included actions is pending to submit a
14 petition for coordination to the Chairperson of the Judicial
15 Council.

16 In the case at bar, a draft copy of the proposed petition is
17 attached hereto and incorporated herein by reference. Simply put,
18 all three cases are predicated on the identified provisions of the
19 settlement contract being legal and enforceable. Armstrong says
20 they are not and has litigated the question in the context of
21 Scientology's motion for a preliminary injunction in the trial

22 ⁴ Recognizing the potential chilling effect of lawsuits
23 brought primarily for the purpose of curbing the valid exercise of
24 the constitutional rights of petition or freedom of speech, The
25 purpose of the legislation is set forth in its first subsection:
26 "The Legislature finds that there has been a disturbing increase
27 in lawsuits brought primarily to chill the valid exercise of the
28 constitutional rights of freedom of speech and petition for
redress of grievances. The Legislature also finds and declares
that it is in the public interest to encourage continued
participation in matters of public significance, and that this
participation should not be chilled through abuse of the judicial
process." (Code of Civil Procedure § 425.16(a).)

1 court and now in the Second District Court of Appeal. Judge
2 Horowitz in Department 30 of the Los Angeles Superior Court
3 believes that there is a sufficient likelihood of a dispositive
4 ruling coming from the Second District Court of Appeal that he has
5 stayed all trial proceedings before him in Armstrong II. The
6 Honorable Diane Wayne, in Department 86 of the same Court, has
7 declined to hold hearings on Scientology's two efforts to have
8 Armstrong held in contempt for allegedly violating a preliminary
9 injunction based on the contract.

10 Under these circumstances, where all the litigation has been,
11 and is, in the Los Angeles Superior Court, and where the claims
12 and defenses are the same, to refer Armstrong's petition to the
13 Judicial Council for the purpose coordinating this case with would
14 "promote judicial efficiency and economy by providing for the
15 unified management of both the pretrial and trial phases of the
16 coordinated cases." (Citicorp N.A., Inc. v. Superior Court (1989)
17 213 Cal.App.3d 563, 566, n.3.)

18 **III. CONCLUSION**

19 Based upon the foregoing points and authorities, defendants
20 respectfully submit that the motion to commence coordination
21 proceedings should be granted and the matter referred to the
22 Chairperson of the Judicial Council.

23 DATED: October 3, 1993

HUB LAW OFFICES

24
25
26 By: 

FORD GREENE

Attorney for Defendant and
Petitioners GERALD ARMSTRONG
and THE GERALD ARMSTRONG
CORPORATION